



## Item No. 14 Town of Atherton

### **CITY COUNCIL STAFF REPORT – REGULAR AGENDA**

**TO: HONORABLE MAYOR AND CITY COUNCIL**

**FROM: GEORGE RODERICKS, CITY MANAGER**

**DATE: JUNE 21, 2017**

**SUBJECT: REVIEW STAFF REPORT AND PROVIDE DIRECTION TO THE SOLID WASTE SUBCOMMITTEE WITH RESPECT TO CONTINUING DISCUSSIONS WITH RECOLOGY AND THE SBWMA AND AUTHORIZE THE SUBCOMMITTEE TO NEGOTIATE WITH RECOLOGY ON BEHALF OF THE TOWN**

#### **RECOMMENDATION**

Review the staff report and provide direction to the Solid Waste Subcommittee with respect to continuing discussions with Recology and the South Bay Waste Management Authority (SBWMA) and authorize the Subcommittee to negotiate with Recology on behalf of the Town.

#### **BACKGROUND**

The Town is a member of the SBWMA together with the Belmont, Burlingame, East Palo Alto, Foster City, Hillsborough, Menlo Park, Redwood City, San Carlos, San Mateo, County of San Mateo and the West Bay Sanitary District. Council Member Widmer serves on the Board of the SBWMA on behalf of the City Council and Vice Mayor Wiest serves as the alternate. Together, Council Member Widmer and Vice Mayor Wiest make up the Town's Solid Waste Subcommittee.

The SBWMA, via an Ad Hoc Franchise Agreement (FAX) Committee and on behalf of its member agencies, has been in negotiations with Recology of San Mateo County (Recology) since November 2016 to arrive at a mutually-agreeable, Amended and Restated Model Franchise Agreement and cost for Collection Services. The current franchise agreement with Recology expires in 2020.

The FAX Committee's Draft Findings and Recommendations Report and Redlined Model Franchise Agreement were presented and discussed by SBWMA Board of Directors. Key topics raised by Board Members included:

- Term - the relative financial benefits of a 10-year versus 15-year renewal term.

- Analysis of the value proposition posed by Recology's Cost Proposal (consistency with area rates, no new-service provider transitions, sharing of future inflationary risk, labor continuity, rate-setting predictability and stability).
- Clarification of Recology's General and Administrative (G&A) costs compared to current contractual costs.

The SBWMA Board will consider additional analysis of the G&A costs at their upcoming Board Meeting. The Draft Amended and Restated Model Franchise Agreement has been reviewed by the FAX Committee, the Technical Advisory Committee, and the Member Agency Attorney's Group. Copies of the May 25 Board Update and Chronology are attached.

## **ANALYSIS**

Additional analysis of the G&A is the only remaining item to be discussed by the SBWMA Board prior to review and approval of the Draft Amended and Restated Model Franchise Agreement and releasing the Model Franchise Agreements out to the member agencies for review and individual discussions with Recology. These discussions may encompass June and July Board Meetings and may result in additional negotiations with Recology to hone in on an acceptable number.

Once the SBWMA adopts a Draft Amended and Restated Model Franchise Agreement (8 member agencies required for adoption to move it forward), each member agency may then meet and confer with Recology to negotiate agency-specific changes to the Agreement. All the Town's prior amendments to the existing Franchise Agreement with Recology (reflective of Atherton-specific services) will automatically roll forward into the new Franchise Agreement and do not need to be re-negotiated; however, the Town may still negotiate limited Atherton-specific changes that do not affect key provisions of the model franchise agreement negotiated by the SBWMA. While the Town may negotiate minor changes to the Agreement that are Atherton-specific and collection related, the Town may not negotiate some of the more significant legal modifications to the Agreement that bring it up to date; nor can the Town amend the proposed term of 15-years.

Assuming SBWMA Board Approval of the Amended and Restated Model Franchise in June/July, Member Agency level review and approval occurs between July/August and September/October 2017. The SBWMA will work closely with each member agency as they move through agency-specific conversations with Recology.

It is recommended that the Council hear any updates from the Subcommittee and direct the Subcommittee and City Manager to meet with Recology to negotiate Atherton-specific changes to the franchise as needed. The timeline for this work is expected to last through September/October 2017. If successful, a fully executed agreement is anticipated by December 2017. However, following discussions, if the Subcommittee is unable to satisfactorily come to a mutually-agreeable solution, the Subcommittee may recommend that the City Council consider a formal bid process.

If a bid process is ultimately selected, staff from the SBWMA and an engaged consultant may assist the Town in moving forward. The current franchise expires at the end of calendar year 2020.

### **POLICY FOCUS**

There are no significant policy issues related to this item at this time. Once a Draft Amended and Restated Franchise Agreement is approved by the SBWMA Board, the Council has the ability to negotiate agency-specific changes. If unsuccessful, the Council may opt to put collection services out to public bid. If successful, an Amended and Restated Franchise Agreement would be presented to the Council for review and approval.

### **FISCAL IMPACT**

None.

### **PUBLIC NOTICE**

Public notification was achieved by posting the agenda, with this agenda item being listed, at least 72 hours prior to the meeting in print and electronically. Information about the committee and commission vacancies was also disseminated via the Town's electronic News Flash and Atherton Online between March and June. There are approximately 1,300 subscribers to the Town's electronic News Flash publications. Subscribers include residents as well as stakeholders – to include, but be not limited to, media outlets, school districts, Menlo Park Fire District, service providers (water, power, and sewer), and regional elected officials.

### **ATTACHMENTS**

Attachment A - Franchise Negotiation Milestones  
Attachment B – Update to Proposed Model Franchise Agreement Activities

## Attachment 1: Franchise Negotiations/Project Milestone Summary

Process Milestone	Date Completed	Comments
<b>PROCESS SET-UP</b>		
1. SBWMA FAX Committee Formation	SBWMA Board Mtg. April 2016	Authorized by Resolution #2016-21
2. SBWMA Staff Distributes RFQ <i>Soliciting lead negotiator and financial analytical services</i>	11/1/16	*Two highly-qualified responses from R3 Consultants and HF&H Consultants * Board selects HF&H (Resolution #2016-44)
3. SBWMA Negotiation Team Formation * HF&H Consultants, Lead Negotiator * RJP Proto, SW Industry Technical Expert * SCS Engineers, Staff augmentation * ADCL, Legal support	12/14/16	Professional Services Contracts are now completed for all team members.
4. Preliminary Meetings w/Recology	11/2/16 11/3/16	Excellent briefing with Recology team of key operational issues of high importance to them.
6. Recology Submits Franchise Agreement Redlines for proposed new term	11/30/16	* Redline completed at SBWMA request. *This doc provides an important starting point for our negotiation discussions.
10. Recology Cost Proposal /RFP	1/10/17	*Recology delivered comprehensive, 644-page response document. *HF&H Consultants currently reviewing submittal.
<b>MEMBER AGENCY INPUT</b>		
8. <u>Member Agency Input #1:</u> TO: Board Members; Alternates; City Managers	12/16/16	*Survey completed on 1/10/16. *All 12 Member Agencies responded. * 23 total responses. *Survey Goal: Secure input to shape SBWMA's key negotiation points.
9. <u>Member Agency Input #2:</u> TO: TAC + FAX members	1/5/17	* Joint TAC/FAX meeting was held on 1/5. * 35 attendees; 11 of 12 MAs attended. *Special Session goal: To solicit input from TAC/FAX members (senior-level member agency staff) to shape Agency's key negotiation points.
11. <u>Member Agency #3:</u> Future Growth Survey	Survey closed 2/1/17	Survey sent to Member Agency's senior Planners (through TAC members). Survey Goal: To identify growth factors through 2030 that may affect Recology's operations, productivity and costs.
<b>NEGOTIATIONS PROCESS</b>		
7. Negotiation Team Meetings <i>Joint Meetings w/SBWMA + Recology</i>	2016: 12/7 2017: 1/11; 1/23 2/2; 2/9 3/20 4/4; 4/6; 4/17	Frontline discussions on key language, costs and negotiation points.  Numerous conference calls and side meetings also occurred to address/resolve topic-specific items, research and cost analysis..
5. FAX Ad Hoc Committee Meetings <i>Six Board-appointed FAX team members:</i> * Chair, Jim Porter, County of SM * Vice Chair, Melissa Stevenson-Diaz * Larry Patterson, San Mateo * Afshin Oskoui, Belmont (also TAC Chair)	2016: 11/10; 12/7 2017: 1/12; 1/24 2/6; 2/21 3/8; 3/28 4/18	SBWMA's Negotiation Team provides in-depth report backs of key discussion items to FAX for feedback and direction.  NOTE: Recology presented to FAX on 3/8.

<p>* Brenda Olwin, EPA * Heather Abrams, Menlo Park</p>		
<p><b>SBWMA Finance Committee Review</b></p>	<p>2017: Cancelled</p>	<p>Presentation cancelled.</p>
<p><b>SBWMA Technical Advisory Committee (TAC):</b></p> <p>NOTE: The SBWMA TAC is comprised of 12 senior representatives, including one from each SBWMA member agency. TAC members include: a City Manager, Public Works Directors/staff, Finance Directors and Environment Programs staff.</p>	<p>2017: 4/13 5/3</p>	<p>Staff and Consulting team held a ½ day workshop on May 3<sup>rd</sup> for member agency staff and interested parties with a highly-detailed review of proposed finances, key operational factors and contract language modifications. Over 45 TAC members, board members, stakeholders and Recology managers attended.</p> <p>NOTE: Recology presented to the joint TAC/FAX on 4/13.</p>
<p><b>SBWMA Board</b> Consisting of 12 representatives from each member agency (elected officials)</p> <p>*****</p> <p><b>SBWMA Member Agency FAX Presentations to all Elected Bodies</b></p> <p>*****</p> <p><b>SBWMA Board</b></p>	<p>2017: 4/27 5/25</p> <p>*****</p> <p>2017: 5/1-5/22</p> <p>*****</p>	<p><b>4/27: Informational Agenda Item-</b> Comprehensive presentation of FAX Committee Report-Findings and Recommendations. Board questions/ comments were noted and addressed in final FAX Report to be presented for SBWMA Board consideration on 6/22.</p> <p>*****</p> <p><b>Staff presented FAX Committee Findings and Recommendations to all 12 member agency city councils, County Board of Supervisors, and SBWMA City/County/District Managers.</b></p> <p><b>In addition to the TAC workshop held on May 3<sup>rd</sup>, (cited above), two additional workshops were held:</b></p> <ol style="list-style-type: none"> <li>1. For Member Agency City Managers (5/11)</li> <li>2. a second ½ day workshop was held specifically for Member Agency Attorneys (5/16).</li> </ol> <p>*****</p> <p><b>5/25: Informational Update —</b> Report out on Member Agency presentations and three workshops.</p> <p><b>6/22: Action Item (Fallback date)—</b> FAX Committee Final Report-Findings and Recommendations presented to SBWMA Board for consideration.</p> <p><b>Upon SBWMA Board's adoption of FAX Final Report-Findings and Recommendation— Part One of process concludes.</b></p>

**Red** = New changes since last report.  
**Blue** = Confirmed FAX work plan elements.

## STAFF REPORT

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To: SBWMA Board Members  
From: Joe La Mariana, SBWMA Executive Director  
Date: May 25, 2017 Board of Directors Meeting  
Subject: Update to Proposed Recology Model Franchise Agreement and Compensation Package Activities

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### Recommendation

This staff report is for discussion purposes only and no formal action is requested at this time. Staff anticipates a proposed action item at the June Board meeting to accept the FAX Committee's Draft *Findings & Recommendations Report* and Amended and Restated Model Franchise Agreement.

### Summary

The SBWMA's Ad Hoc Franchise Agreement Extension (FAX) Committee, staff, and consultants have negotiated with Recology of San Mateo County (Recology) representatives since November 2016 to arrive at a mutually-agreeable, Amended and Restated Model Franchise Agreement and cost for Collection Service. The FAX Committee's Draft *Findings and Recommendations Report* and Redlined Model Franchise Agreement were presented and discussed at the April 28, 2017 SBWMA Board of Directors meeting. Key topics were raised by Board Members pertaining to the Recology's cost proposal included:

- Information regarding the relative financial benefits of a 10-year vs.15-year term.
- Requests for more information to evaluate value proposition posed by Recology's Collection Services cost proposal for rate payers.
- Clarification of Recology's proposed increase in general and administrative (G&A) costs compared to the costs of the current Agreement. These costs currently represent 16% of Recology's 2021 cost proposal, or \$10,465,605.

Between May 1<sup>st</sup> and May 23<sup>rd</sup>, SBWMA staff has conducted numerous informational presentations at Council meetings of all 12 Member Agency's (60+ elected officials) and at workshops (see listing below) to provide a much deeper dive into the proposed financial and contractual terms. It should be noted that Recology's senior management attended and actively participated in the Technical Advisory Committee (TAC) and the City Attorney meetings and many SBWMA Board members also attended these two meetings. More details are provided in the Analysis section of this report.

- The SBWMA's 12 TAC members and agency solid waste staff (May 3<sup>rd</sup>)
- The SBWMA's 12 City Managers (May 11<sup>th</sup>)
- The SBWMA's 12 City Attorneys (May 16<sup>th</sup>)

### Next Steps

- Providing an update to SBWMA Board at the May meeting regarding the remaining process, outstanding negotiation points and/or other issues identified.

- Finalize negotiations with Recology on the Amended & Restated Model Franchise Agreement and Cost of Services proposal to be presented to the SBWMA Board at their June 22<sup>nd</sup> meeting as an action item. (Note: With SBWMA Board approval, the initial contract and change order #1 for HF&H Consultants work will be completed).
- Obtain final legal comments on the Restated & Amended Model Franchise Agreement from all 12 Member Agency's attorneys by June 9<sup>th</sup>. Address and incorporate any issues raised regarding the remaining process, outstanding negotiation points and franchise agreement language.
- Work closely with each Member Agency to obtain "Approval" of the SBWMA findings at their respective council meetings. Assuming SBWMA Board approval on June 22<sup>nd</sup>, Member Agency level approval will occur between July - September 2017.
- Staff and consultants will work closely with each Member Agency to support their negotiations and approval of the 12 individual Franchise Agreements before the end of 2017. (Note: A new change order for HF&H Consultants will be need to support the individual Member Agency negotiations. It is anticipated this these consulting support would be billed back to each Member Agency as an adjustment during the annual Contractor's Compensation Adjustment Application process).

### Analysis

Staff was tasked to negotiate a restated and amended Model Franchise Agreement and cost for services with Recology. During these negotiations, SBWMA staff worked with the FAX committee, consultants and Recology during numerous meetings to develop an Amended & Restated Model Franchise Agreement for collection services for the SBWMA service area.

As part of the SBWMA Board April 28 Board meeting, the FAX Committee's Draft *Findings and Recommendations Report* and Redlined Model Franchise Agreement were provided for discussion and contained the most recent outcome of the negotiation process. There was discussion during the meeting surrounding the proposed term and compensation proposed in the new agreement with Recology. Details on the term and compensation are as follows:

- **Term:** Recology has proposed the option of a 10-year or a 15-year term. After considering the financial benefits of spreading the depreciation cost for a new collection fleet, the FAX committee is recommending a 15-year term. At the end of the current contract, Recology's \$36.3 million collection fleet will be fully depreciated, however, the company has indicated that it can continue to use the vehicles for 2-3 additional years. By agreeing to a 15-year term, and combining the use of the current and new vehicle for a longer term, the Member Agencies will benefit from an ~\$1.7 million per year (3.4%) reduction in depreciation and interest expense when compared to the 10-year option.
- **Compensation:** The FAX committee is recommending an agreement with a 2021 Base Contractor's Compensation of \$65,330,616, which assumes a 15-year term and the inclusion of depreciation expense for the replacement collection vehicles in rate year 2020 of the Current Agreement. Based on these assumptions, the Base Contractor's Compensation will:
  - Increase 2.4% from 2019 to 2020 (instead of a ~7% reduction built into the current Agreement).
  - Increase 10.2% from 2020 to 2021.
  - Adjusts annually, thereafter, per changes in industry indices and service levels changes (capped at 5% increase/year).

## Compensation

- Details on the “meet and confer” provision should have ranges for time and costs included in the agreement so that there cannot be big swings (concerned about change orders).
- Information requested on specifics to how the cost savings from extending the truck fleet are realized as savings.
- Concern about the term “true up”, what is included and how / when a true up occurs.
- Request to ensure the residents will not be charged again for their carts.
- Multiple concerns were raised on Recology’s increase in G&A costs.
- Concern was expressed about the decision to Sole Source a contract worth \$1B.
- Information requested on Member Agency obligations for going out to bid and if the SBWMA has the \$2-3 Million in costs to go out to bid.
- Details requested to confirm Recology’s profit margin is actually 9.5%.
- Suggestion to confirm there is an exit provision in the agreement for non-performance.

## Services

- Concern that the waste characterization audits are being discontinued, and question on what the current contamination rate is and its impact on selling commodities.
- Franchise Agreement, Section 7.13 needs to be expanded to include Member Agency’s in addition to SBWMA.
- Request to understand whether the cap on Bulky Item Collection (BIC) was at the Member Agency level or SBWMA wide, how a Member Agency would know when they are at the BIC limit, and how to plan when getting close to maximum.
- Question on how rates get communicated to the residents, and to make sure that there was coordination between the City, contractor and the SBWMA on rate impacts and process.

1. **Member Agency Workshops:** As previously noted, three workshops were held for Member Agency Staff, Attorneys, City Managers and SBWMA Board Members, to provide much greater detail on the outlined changes to the Model Franchise Agreement and cost for services with Recology. The following outlines the general comments provided:

- Discussion on Bulky Item Collection and Abandoned Waste requesting the SBWMA to be notified and in-turn notify the Member Agencies.
- Concern that all trucks are depreciated by the end of the current Recology contract, and Member Agencies feel depreciation in 2021 should be zero until Recology starts purchasing trucks.
- A request for the negotiation team to put together more information and comparison on G&A costs including other large hauling companies.
- Concern was raised over a 15-year duration for this contract and if this is normal. A request was made to understand how many 15-year contracts are currently in place.

## Background

The Franchise Agreement for Collection Services for Garbage, Recycling and Organic Materials with Recology expires on December 31, 2020. SBWMA member agencies are currently in the seventh year of a ten-year Franchise Agreement for Collection Services for Garbage, Recycling and Organic Materials with Recology. During this time, feedback provided by Board Members, Member Agency staff, and community members surveyed, has consistently established that Recology has provided a high-level of professional competency during the execution of their operations throughout this period, in addition to the intense three-

year pre-service rollout period.

The SBWMA Board of Directors approved the Final Plan and Recommended Process for Supporting Member Agencies with Negotiating a Potential Franchise Agreement Extension with Recology (Plan) on April 28, 2016, which recommended a schedule that, if adhered to, was intended to result in negotiating amendments to each member agency's existing Franchise Agreements with Recology by the end of 2016. The timeline for this plan was adjusted to allow the new Executive Director time to address other urgent contractual matters, to establish a new timeline, and to initiate the Recology negotiation meetings, the FAX committee meetings, and all internal SBWMA staff meetings that were necessary for moving the negotiation process forward.

At the SBWMA Board of Directors' (Board) direction, the FAX committee, Staff and consultants have worked closely with Recology since November 2016 holding a special TAC meeting in January and April, ten FAX committee meetings, seven negotiation sessions with Recology (several phone meetings were also held between Recology, HFH Consultants and SBWMA staff) and two additional all-day negotiations sessions to finalize negotiations. During the last six months of the negotiation process, the FAX committee, SBWMA staff and consultants have worked closely with Recology to define the cost for services, the rate setting methodology, and an amended and restated Franchise Agreement.

As part of the SBWMA Board of Directors April 28, 2017 meeting packet, the FAX Committee's Draft Findings and Recommendations Report and Redlined Model Franchise Agreement were provided for discussion and contained the most recent outcome of the negotiation process. Because several negotiation points were still being finalized, detailed financial worksheets were not presented, however there was significant discussion during the meeting surrounding the current term and compensation package for services with Recology.

The final goal of the process is to have the SBWMA Board of Directors approve these documents and for the SBWMA staff to assist to each member agency to coordinate with Recology to finalize the contract language, specific scope of services and the pricing of additional services for their respective agency by December 31, 2017. A RFP process to solicit a new collection services provider will be initiated if less than eight of our 12 member agencies are not formerly in contract with Recology by December 31, 2017.

The negotiated deal to be considered by the Board provides:

- **Consistency with all existing solid waste, recycling and organics services.**
- **No new-service provider transition pitfalls** (i.e., container switch-out, customer service center setup & billing setup, driver route training, hard-rollout a new truck fleet, developing a new rate setting process, and end-of-contract buyouts (e.g. Allied Waste's exit)
- **Rate-setting stability/predictability**-after an initial rate true-up, rate increases are tied to indexes.
- **SBWMA rates will continue to be in-line** with Bay Area communities.
- **Continued cost savings from collection efficiencies** gained by Recology's years of experience.
- **Sharing of future inflation risk by Recology** in their 2021 Cost Proposal.
- **Savings of an estimated \$2-3 million** in avoided RFP and contractor-transition costs.
- **Labor continuity** by continuing with a known company and management team.

### **Fiscal Impact**

There is no direct impact to the SBWMA's FY 17-18 operating budget as all collection system costs are recovered by those ratepayers who directly utilize these services.

Important notes: The proposed SBWMA FY 17-18 Operating Budget has \$450,000 designated to fund a public procurement process (aka "Request for Proposals", or "RFP") if terms, conditions and pricing cannot be satisfactorily reached between the Agency and Recology for collection services after December 31, 2017. If an RFP process initiated, and those costs exceed this budgeted amount, Staff recommends funding the difference from Agency Reserves. If agreement is successfully met, the designated \$450,000 will default into the SBWMA Capital Reserves account.

**Attachments:**

A: SBWMA City Council Meeting Calendar

# May 2017

## Elected Officials Presentations Regarding Franchise Agreement Negotiations

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
	1 *7:00 PM Burlingame *7:00 PM San Mateo	2	3 9:30 to 1:30 Member Agency Workshop *4:00 PM Atherton	4	5	6
7	8 *6:00 PM Hillsborough *7:00 PM San Carlos	9 *7:00 PM Belmont	10 *7:00 PM WBSD	11 *10:30 AM ( Internal ) City Mangers at SM Library	12	13
14	15 *6:30 PM Foster City	16 *9:30 AM SM County 9:30 to 1:30 Legal Review Workshop *7:30 PM East Palo Alto	17	18	19	20
21	22 *7:00 PM Redwood City	23 *7:00 PM Menlo Park	24	25 2-4pm - SBWMA Board Meeting FAX presentation to BOD - Action Item	26	27
28	29	30	31			

\* Confirmed

Revised: 5/5/2017